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JEWISH LAW OF MARRIAGE AND DIVORCE.*

The Jewish law of marriage and divorce is a law of historical growth. It is a part of the large and widely ramified talmudic and rabbinic system. This whole system has its germs and roots in the laws of the Torah. But as times changed and circumstances altered, and as new conditions of life came into existence, it was more or less clearly felt that the ancient Mosaic Law was partly insufficient, partly ill adapted for the new life, and that new laws were required, better adapted for this new life. Remedies had to be looked for. Traditional customs, inherited from former ages, which in the course of time had become a sort of Common Law, were now made a part of the Statute Law of Israel. By hermeneutic arts, large numbers of new regulations and legal provisions were deducted from, and based upon the letters of the law of the Pentateuch. It cannot be denied that also considerable portions of the Talmudic Law, though ostensibly deducted from the Law of the Torah, had gradually come over from Greek, Roman, and Persian law-systems,—proof for which can easily be furnished by anyone who makes comparative studies concerning points under consideration. In this wise the intricate and all-regulating Law of the Jews *grew*. Only the relentless persecutions of the Jewish people and the indescribable sufferings of the same during the Middle Ages could stop the further growth and organic development of the Law. Certain parts of the same could, of course, only be studied theoretically, as, in consequence of the dispersion, these parts could practically not be applied any more, so, for instance, the laws concerning the ritual of the temple, the criminal laws, and so forth.

Where are the sources for the study of this Law?

Rabbi Juda, surnamed the Prince, made towards the end of the second century a systematic collection of the then existing laws, including also in this collection those laws which already in his time had been antiquated. For it was held that these old laws were but in abeyance, that *de jure* they were still valid, and that in a future time they would actually become again living laws. The work of Rabbi Juda is called the *Mishnah*. It is the fundamental work of the whole talmudic literature. In the schools and academies of the Jews in Palestine, as well as in Babylonia (Persia), the Mishnah was taken up as a kind of text-book. The discussions upon the texts of the Mishnah which had taken place in the Jewish schools in the third, the fourth, and the fifth century, were collected, and these collected discussions constitute the main substance of the two *Gemaras* (or *Talmuds*, in the narrower sense of the word), of the Jerusalem Talmud and the Babylonian Talmud. To the uninitiated, the Talmud is a labyrinth in which he will soon lose his way if he has no good guide. No systematic order is there in treating the various subjects. A certain point is commenced to be discussed, but

* THE JEWISH LAW OF MARRIAGE AND DIVORCE IN ANCIENT AND MODERN TIMES. By Dr M. Mielziner. Cincinnati: Bloch Publishing Co., 1884, pp. 149. Price \$2.00.

unexpectedly or accidentally another one happens to be touched, and the discussion "goes off in a tangent." Besides *Halakhah* (law), the *Agadah* (parables, ethical sayings, histories, folklore, etc.) fills many pages, aye, whole chapters in the Talmud.

In the volumes of the Talmud, and in some other books which originated in the Talmudic period, and which properly belong also to the "talmudic literature," the sources of the Jewish law are found; consequently also the sources of the Jewish law of marriage and divorce.

In later times, the halakhic portions as well as the agadic portions of the Talmud were often extracted from the main work. The halakhic abstracts, of which alone we can give here a very brief account, must be divided in two classes: one class following the order of the talmudic tractats, the other class dividing and subdividing the laws in accordance with a preconceived logical plan and presenting them in the forms of modern codes. Of the former class we mention, as the most important digests of talmudical law, the following two: the abstract made by *Isaac Alfasi* (11th century), and that made by *Asher ben Yehiel* (14th century). Of codifications, three have become particularly distinguished, viz.: the code *Mishneh Torah* (or *Yad Hahazagah*) by Moses Maimonides (12th century); the *Arba'ah Turim* by Jacob ben Asher (14th century); and the *Shulhan Arukh* by Joseph Caro (16th century). Each one of these five great juridical works has had many annotators and commentators, and many of the commentaries were again commented upon by supercommentaries. Special parts of the law were furthermore independently treated in numerous bulky volumes, legal opinions and decisions were written and published in exceedingly large numbers by learned jurists and Rabbis,—but we should rather not say "by jurists *and* Rabbis," it would probably be more correct to say "by jurists *or* Rabbis," for "jurist" and "Rabbi" were in former times, when the Jews had to a certain extent their own jurisdiction, almost synonymous terms in the Jewish diaspora. In literal truth it can therefore be said that the law literature of the Jews comprises thousands of volumes. This brief outline must suffice here.

Dr. M. Mielziner, Professor at the Hebrew Union College in Cincinnati, has undertaken the praiseworthy work of furnishing the English speaking public with a small, yet comprehensive book on the Jewish law of marriage and divorce. Prof. Mielziner is a very erudite talmudist, and in concise manner and good order he has stated in his book recently published, the most important points thereof. It is not likely that very many of the non-Jewish or Jewish students in America can gather information from the primary sources, which are so difficult to master. They will therefore thankfully accept the reliable guidance of Prof. Mielziner. In his book the author speaks first of the view taken by the Bible and by the Talmud of the ethical character of marriage; and then he treats of polygamy and monogamy; of prohibited degrees of affinity according to the Bible and according to talmudical extensions; of intermarriage with non-Jews; of the so-called levirate marriage; of marriages especially forbidden to the Ahronides; of the qualifications to contract marriage; of the form of concluding marriage; of marital rights and duties; of the dissolution of marriage by death, or by divorce, etc. And incidentally the author comes to speak of several other points of the Jewish marriage law.

The learned author makes here and there some attempts to employ historical and comparative methods, but in the main he makes dogmatic statements.

But now-a-days students of such a subject are not satisfied to learn what the law *is*, they want to learn more, they want to follow the *development* of the law from century to century, from stage to stage, they want to know how the law *became* a law. It would also have been very interesting and instructive if Dr. Mielziner had made some comparisons with the corresponding laws of the Qaraites and of the Samaritans, the more so as their laws are also "Jewish" laws.

Some special points invite for critical counter-remarks, and here and there the author is probably in error. But *THE OLD TESTAMENT STUDENT* is hardly the place to enter into minute criticisms of the details of this book.

Taken altogether we would recommend the book as the best of its kind in the English language to those who desire to know what the Jewish law on marriage generally was, and what it still is in large parts of the world. In America and in Western Europe there are now many who would not accept and would not actually apply *all* these laws. Even some of the most vital points are now disputed by some and openly disregarded. Whether by right, or not,—this cannot be discussed here, for this concerns inner-Jewish questions. B. FELSENTHAL.

JEWISH LAW OF MARRIAGE AND DIVORCE.

The author of this work is professor of the Talmud and of the Rabbinical Disciplines at the Hebrew Union College in Cincinnati and shows himself well qualified for the task which he has undertaken. The whole is treated in sixteen chapters, viz., I. The Marriage Relation, according to the ethical doctrines of the Bible and the Talmud; II. The Sources of the Jewish Marriage Law; III. Legal view of marriage; IV. Monogamy and Polygamy; V. Consanguinity and Affinity; VI. Prohibition in consideration of chastity; VII. Prohibition on account of religious and other considerations; VIII. Temporary impediments; IX. Qualification to contract marriage. The last five chapters the author puts under the general heading of *Prohibited Marriages*. Chapters X., XI. speak of the form of marriage in ancient and modern times; XII. of the offspring of lawful and unlawful marriages; XIII. of husband and wife; XIV.–XVI. speak of *the dissolution of marriage*; XIV. by death; XV. by divorce; XVI. the Jewish law of divorce in modern times. The last ten pages are occupied by the index. Such is an outline of the book before us which grew out of lectures that the author delivered before the Senior Class of the Hebrew Union College. There is no doubt that this book will be welcomed by a great many, who have no access to Ginsburg's elaborate article in Kitto's *Cyclopædia* s. v. *marriage*, or to the same matter in McClintock and Strong's work, which is more elaborate than the matter found in Mielziner. What makes the latter's work valuable is the fact that the author has given extracts from the minutes of Jewish synodical assemblies and the opinions of some prominent rabbis on some marital points. But these decisions are good only as far as they go; they are not the expression of Judaism but of a Reform party, which is remarkable for its inconsistency; for whereas it rejects the tradition of the rabbis, yet when it suits the purpose, the very same rabbis are petted. Be this as it may, the merit of the book before us consists not only in the systematic arrangement and popular treatment of the material, but also in the special notice which it takes of all the questions which have arisen in modern times concerning the Jewish Law of Marriage and Divorce, and of all the resolutions which have been passed in the last forty years by the various Rabbinical Conferences